I accordingly reverse the finding and sentence of the Magistrate, and acquit the seven Petitioners and also the three other persons who were convicted, but who have not petitioned for revision.

The fines, if paid, are to be refunded to the convicted persons. The order of confiscation and the reward to the informer is set aside.

Conviction quashed.

[CRIMINAL REVISIONAL JURISDICTION]

McELWAINE, C.J.

July 21, 1938.

REX v. LAM CHIP HENG.

[SINGAPORE CRIMINAL REVISION No. 5 of 1938]

Municipal Ordinance (Cap.133)—Mandatory Order under S.144, sub-s. 9—Failure to comply with mandatory order—offence punishable under S. 255.

A mandatory order was made under S. 144, sub-s.9 of the Municipal Ordinance requiring the defendant to do certain work within 14 days. The defendant did not comply with the order and subsequently he was charged with having failed to comply with the order within 14 days and a penalty of 8 days was incurred thereby. A summons was issued against the defendant on the 8th of June 1938 alleging 8 days default in complying with the order (though on that day there had been apparently a default of 34 days). The case was called on the 22nd June 1938 when the accused pleaded guilty and was fined $249.50, in respect of a default of a period longer than 8 days. The summons charged an offence for which the maximum punishment was $80 and the charge was not amended to allege a longer default than 8 days.

Held, that the actual period of default should be set out in the charge. If it was desired to give evidence of any additional default the charge could have been amended or a new summons could have been issued charging further default. But in default of any such amendment or new summons the sentence was illegal and the fine must be reduced to the maximum penalty for the offence charged, i.e. $80/-.

Howe, Crown Counsel, for the Crown.

McELWAINE, C.J.—Lam Chip Heng petitioned this Court to revise a sentence passed upon him. I set the case down for hearing in open Court.

The facts shortly are as follows:—In April 1937 Lam Chip Heng was fined $25 for erecting cloth screens, in a theatre of which he was tenant, to form living compartments and a mandatory order was made (presumably under section 144 (9) of the Municipal Ordinance, Cap. 133) directing the removal of the screens within fourteen days.

On the 12th May an information was laid by a Municipal Overseer pursuant to which a summons was issued on the 8th June 1938 calling upon the said Lam Chip Heng to attend on the 22nd June "to answer to a charge that you have failed to comply with a Mandatory Order dated the 13th day of April 1938, issued under the hand and seal of a Police Magistrate for Singapore, in accordance with the provisions of the Municipal Ordinance (Cap. 133) directing you to reinstate to its original use, the theatre which was converted into a dwelling by erecting cloth screens forming compartments on ground floor of "the said premises, within fourteen days and a default of eight days was incurred thereby, and that you have thereby committed an offence under section 255 (1) and punishable under section 255 (3) of the said Ordinance."

The case was called on 22nd June 1938 when the accused pleaded guilty and was fined $249.50 or 2 months R.I.

The fine was apparently based on a default continuing up to 22nd June. The summons was issued on 8th June alleging eight days default though on that day there had apparently been a default of 34 days.

The maximum fine under section 255 (3) is ten dollars for each day during default.

The summons therefore charged an offence for which the maximum punishment was $80. It is manifest that either the sentence was illegal or that the conviction was not a conviction for the offence charged.

The charge was not amended. A conviction on the charge would shew that Lam Chip Heng was convicted of a default of eight days ending on May 11th. The conviction on the face of it would be no answer to a subsequent summons for a continuing offence for a default from and including 12th May to 22nd June.

Mr. Howe directed my attention to Form J in the Schedule setting out the form of charge for an offence under section 255 and suggested that it is unnecessary to specify the number of days during which default continued. As the form of charge alleges "you have made default" it cannot mean a default continuing after the date of the summons.

But I think it proper that the actual period of default should be set out, so that the defendant may know exactly what he has got to meet. He might admit a default for a certain number of days and might well think the charge was for that number. If evidence was given of a greater number of days default, he would be entitled to give or call evidence denying the greater default.

I think the form of summons actually used is correct. Had evidence been given of default up to 22nd June (which indeed seems to have been admitted) the magistrate could have amended the summons, and if the defendant required time to answer the amended summons, an adjournment would have been appropriate; or a new summons could be issued charging the further default.

In *James* v. *Wyvill*, 51 L.T.R., 237 the defendant was charged with erecting a new building without having given the prescribed notice and plans.

He was convicted and fined for each and every day during which such building should continue or remain, the offence being in its nature a continuing one. The conviction and fine were upheld by a Divisional Court. But it appears to me that to impose a fine for "Each and every day" without specifying the number of days may well involve the Court imposing a fine in respect of an idefinite number of days—even for days after the date of the conviction. Such a fine would be indefinite and the amount could not be ascertained without further inquiry after conviction. This point does not appear to have been taken in *Wyvill's* case. I have not access to the report of *R.* v. *Struve*, 59 J.P., 584, but it is stated in *Stone's* Justices Manual that *Struve's* case decided that such a conviction was clearly bad for imposing penalties for offences not then committed. In any case, the case is distinguishable from the present in which a default for a specified number of days was alleged.

The summons was not amended so the conviction must be taken to be a conviction for the default charged.

The Queen v. *Slade*, (1895) 2 Q.B. 247 was a proceeding by way of *certiorari*.

The appellant was fined in respect of a default continuing for over six months and the Court held that it could not take the conviction to pieces so as to reduce the fine by the amount imposed in respect of the days in excess of six months.

But in *Slade's* case no charge could properly be made in respect of a period anterior to six months before the laying of the information by reason of 11 & 12 Vic. Ch. 43, section 11. Here a charge could have been made in respect of the period from 13th May to 22nd June. The case is not one of *certiorari* and I can alter the sentence.

The fine imposed exceeded the maximum which could be imposed for the offence charged by $169.50. I accordingly reduce the fine by this amount.

Any fine paid by Lam Chip Heng in excess of $80 under this conviction must be refunded to Lam Chip Heng.

I regret the necessity for this order. There appear to be no merits in the petition. The proper authorities will possibly consider summoning the defendant for a continuing default from 13th May to 22nd June, if they can prove such default.

Sentence reduced.

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

July 21, 1938.

REX v. BOOTA SINGH.

[SINGAPORE SPECIAL CASE No. 7 of 1938].

Validity of by-law—Singapore Harbour Board.

A by-law which forbids remaining on the premises of the Singapore Harbour Board is not to be read as also forbidding entrance to such premises for a legitimate purpose. If an individual had so abused his permission to enter the premises of the Singapore Harbour Board that the Board considered that restriction on his entrance was necessary such restriction could only eventually be enforced by written orders to the Police to prohibit such person entering or prescribing conditions under which his entrance was to be allowed.

Finding out whether a person had a legitimate reason for entering the premises is not under the by-law a purpose connected with the regulation of traffic.

CASE STATED.

Howe, Crown Counsel, for the Crown.

McELWAINE, C.J.—This is a case stated under section 317 of the Criminal Procedure Code.

The question shortly is whether failure by the driver of a taxi cab about to enter the Singapore Harbour Board's premises to comply with an order to stop given by a Harbour Board Policeman in uniform on duty regulating traffic on the Harbour Board Premises is an offence, if the order was given with the object of finding out whether the defendant had a legitimate reason for entering the premises.

The magistrate has found as a fact that the signal to stop having been given with the object of finding out whether the defendant had legitimate reason for entering the premises was given for the bona fide purpose of regulating traffic within the Board Premises, but he doubted whether the order to stop was a lawful order under By-law 45, and whether the By-law was valid.

The material by-laws are:—

"45. The admission of persons, carts, carriages or other vehicles, lighters or other craft within the Board's premises and their control while there shall rest with the Board, and the Board may make charges for such admission.

"45.(b) No person in charge of any vehicle or animal of whatsoever description may cause or allow any such to remain in or upon any part of the Board's premises for a longer period than can be shewn to the satisfaction of any authorised official of the Board to be strictly necessary for the legiti-